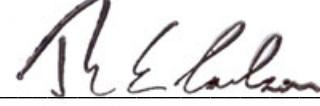


July 17, 2008

GLORIA L. FRANKLIN, CLERK  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA1  
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Signed and Filed: July 16, 2008  
THOMAS E. CARLSON  
U.S. Bankruptcy JudgeUNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re ) Case No. 07-27982 A7  
ROYCE LEE MAKISHIMA and ) Chapter 7  
TERRA ANN MAKISHIMA, ) (Pending in the United  
Debtors. ) States Bankruptcy Court for  
California) )  
GRACE MILES, )  
Plaintiff, )  
vs. ) Adv. Proc. No. 08-3037 TC  
ROYCE LEE MAKISHIMA; A.G. EDWARDS & )  
SONS, INC.; TERRA ANN MAKISHIMA, )  
Defendants. )

**MEMORANDUM RE:(1) DEFENDANTS' MOTION TO REMAND; (2) PLAINTIFF'S  
MOTIONS TO STAY, FOR CONTINUANCE, AND TO DISQUALIFY**

For the reasons stated below, the court grants Defendants' motion to remand and declines to rule on Plaintiff's other pending motions.

**FACTS**

On November 17, 2004, Plaintiff filed San Mateo Superior Court case *Grace Miles v. Royce Makishima and A.G. Edwards & Sons, Inc.*, Case No. Civ. 443220 (the Action). The operative complaint in the

1 Action asserts 20 state-law claims. A trial in the Action was held  
2 from June 12, 2007 through July 5, 2007.

3 On September 28, 2007, Defendant Makishima and his wife filed  
4 chapter 7 in the Bankruptcy Court for the Eastern District of  
5 California (Case No. 07-27982). On October 12, 2007, the state  
6 court issued a 30-page tentative decision. All claims in the  
7 Action were decided in favor of Defendants. On March 21, 2008,  
8 Debtors and Trustee filed a stipulation to modify the automatic  
9 stay to retroactively validate the tentative decision and to permit  
10 the state court to enter final judgment in the Action.

11 On April 28, 2008, Plaintiff removed the Action to this court.  
12 The notice of removal provides that Plaintiff tentatively does not  
13 consent to bankruptcy court jurisdiction, or to the bankruptcy  
14 court's entry of final orders or judgments. On May 28, 2008,  
15 Defendants filed a Motion to Remand, arguing *inter alia* that the  
16 claims are exclusively state-law claims, that the state court  
17 presided over the Action for three years and conducted a four-week  
18 trial, and that the state court has already issued an extensive  
19 decision tentatively resolving all claims.

20 On May 29, 2008, Plaintiff filed and served a Request for Stay  
21 of Proceedings, and a Request to Disqualify Morgan Lewis as counsel  
22 for Defendants.

23 On July 3, 2008, Plaintiff filed an Ex Parte Motion for Stay  
24 Pending Appeals. On July 9, 2008, the court entered any order  
25 denying the Ex Parte Motion for Stay, due to Plaintiff's failure to  
26 serve the Motion and failure to comply with Bankruptcy Local Rule  
27 9006-1.

28 On July 8, 2008, Plaintiff filed a Motion to Withdraw the  
Reference, alleging that the adversary proceeding involves personal

1 injury claims, and that Plaintiff has demanded a jury trial.  
2 Plaintiff also filed opposition to the Motion to Remand, arguing  
3 that the proceeding should be transferred to federal District  
4 Court, or retained by the bankruptcy court. Plaintiff contends  
5 that the state court unjustly denied her request for a jury trial,  
6 that the state-court judge signed the tentative decision for  
7 improper reasons, that the state court denied Plaintiff due process  
8 and generally treated her unfairly, and that the tentative decision  
9 was issued in violation of the automatic stay. Plaintiff also  
10 argues that remand is inappropriate, because she may prevail on her  
11 appeal of the bankruptcy court's order granting relief from stay,  
12 and on her appeal of the state-court order denying Plaintiff's  
13 motion to disqualify the trial judge.

14 On July 10, 2008, Plaintiff filed a second Ex Parte Motion for  
15 Stay Pending Appeals of the stay-relief order and order denying  
16 Plaintiff's motion to disqualify the state-court judge. The Motion  
17 also seeks to continue the hearing on the Motion to Remand, based  
18 on Plaintiff's alleged disabilities and inability to retain  
19 counsel.

20 On July 11, 2008, Plaintiff filed a Motion for Continuance and  
21 Request for Order Shortening Time, and a second Motion to  
22 Disqualify Morgan Lewis, which is set for hearing on August 29,  
23 2008. On July 15, 2008, Defendants filed opposition to the Motion  
24 for Continuance, and the Motion to Disqualify.

25 **DISCUSSION**

26 "The court to which [a] claim or cause of action is removed  
27 may remand such claim or cause of action on any equitable ground.  
28 An order entered under this subsection remanding a claim or cause

1 of action . . . is not reviewable by appeal or otherwise. . . ."  
2 28 U.S.C. § 1452(b).

3 I determine that the adversary proceeding should be remanded  
4 to state court. The removed Action involves purely state law  
5 claims over which this court has no independent jurisdiction (28  
6 U.S.C. § 1334(b)), and trial in the Action has already concluded.  
7 All that remains is for the state court to enter final judgment,  
8 which it may do promptly upon remand. Considerations of both  
9 proper respect for the state court and judicial economy require  
10 that this proceeding be remanded to the state court for entry of  
11 final judgment in accord with that court's decision following  
12 trial.

13        This court is very mindful that Plaintiff strongly believes  
14 that she did not receive fair treatment from the state court. It  
15 is not appropriate, however, for this court to engage in appellate  
16 review of the state-court decision, or to try the case afresh and  
17 thereby ignore the fact that the state court already conducted a  
18 long trial. After the state court enters judgment, Plaintiff can  
19 pursue her grievance in the proper manner, by appealing the  
20 judgment to the California Court of Appeal.

21 Plaintiff's motion for stay pending appeal of the stay-relief  
22 order is not properly directed to this court, because this court  
23 did not issue that order and is not an appellate court. Fed. R.  
24 Bankr. P. 8005. I decline to rule on Plaintiff's motion for stay  
25 pending appeal of the state-court and motions to disqualify Morgan  
26 Lewis, because I am remanding this adversary proceeding to state-  
27 court.

\*\*END OF MEMORANDUM\*\*

## Court Service List

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